

KENTUCKY PERSONNEL BOARD
MINUTES OF NOVEMBER 9, 2012

1. The regular monthly meeting of the Kentucky Personnel Board was called to order by Chairman Doug Sapp on November 9, 2012, at approximately 9:30 a.m., 28 Fountain Place, Frankfort, Kentucky.

Board Personnel Present:

Wayne "Doug" Sapp, Chairman
Larry B. Gillis, Vice Chairman
David F. Hutcheson, Jr., Member
Tommy W. Chandler, Member
Donald W. "Don" Blevins, Member
Ramona Herndon-Griffin, Member
Mark A. Sipek, Executive Director and Secretary
Boyce A. Crocker, General Counsel
Linda R. Morris, Administrative Section Supervisor
Cynthia Perkins, Administrative Specialist

Board Personnel Absent:

David B. Stevens, Member

2. **READING OF THE MINUTES OF REGULAR MEETING HELD OCTOBER 14, 2012**

The minutes of the last Board meeting had been previously circulated among the members. Chairman Sapp asked for additions or corrections. Mr. Blevins moved to approve the minutes, as submitted. Mr. Hutcheson seconded, and the motion carried 6-0. The Board members signed the minutes.

3. **EXECUTIVE DIRECTOR'S REPORT**

Mr. Sipek presented the Personnel Board's 2012 Annual Report for approval. Some of the highlights are as follows:

- There was a slight increase in the number of pending appeals from the 2011 fiscal year of 214 to 225.

- There are a few long-standing investigations that need closure, specifically the Patton Database Investigation, the Returning Retiree Investigation and Starting Salaries (New hires versus incumbent).
- There were 70 settlements which are a significant number for the fiscal year.
- Several amended regulations [101 KAR 1:375, 101 KAR 2:102, 101 KAR 2:140 and 101 KAR 2:180] were approved by the Board.
- There was a total of 296 grievances filed by merit employees, 151 of these were resolved at the first level.

Mr. Gillis noted that the Patton Database Investigation, the Returning Retiree Investigation and the Starting Salaries Investigation are fairly old and should be closed out. Mr. Sipek stated that they were initiated around 2005, some were initiated by former Board members and the Patton Database was brought about through the Fletcher investigation. Mr. Sipek advised that these investigations are broad and are not targeted at any one person.

Mr. Gillis moved to close the Patton Database Investigation, the Returning Retiree Investigation and the Starting Salaries (new hires versus incumbent) Investigation. Mr. Hutcheson seconded and the motion carried 6-0.

At the conclusion of Mr. Sipek's report, Mr. Blevins moved to accept the Board's 2012 Annual Report for distribution as required. Ms. Herndon-Griffin seconded and the motion carried 6-0.

At the conclusion of Mr. Sipek's report, Chairman Sapp called for the Personnel Cabinet's report.

4. **PERSONNEL CABINET'S REPORT**

The Hon. Whitney Meagher came forward to present the Personnel Cabinet's report.

Ms. Meagher stated that the 26th EEO conference will be held in Louisville at the Shelby Campus on November 14, 2012. Registration is still open.

The Cabinet sent out a memo to all agencies requesting whether they had any changes to probationary periods. The agencies must respond by November 16, 2012, if they have any changes. This matter will be on December 2012 Board meeting.

Ms. Meagher stated that the IT consolidation is going well and that 220 employees have changed their reporting structure to the Commonwealth's Office of Technology. The Cabinet sent out a memo on October 29, 2012, concerning evaluations for employees whose reporting structure has changed. Both the interim and the 2012 annual evaluations are to be done by the previous supervisor.

Mr. Blevins asked for additional information on the probationary periods. Specifically, does the Cabinet make the first judgment whether the probationary period is justifiable? Ms. Meagher stated that an agency makes a request to change the probationary period, along with justification for the change. The Cabinet will review the request and, if necessary, ask for additional justification from the agency. The Cabinet will then present the recommendation to the Board for approval.

5. ORAL ARGUMENTS

A. Barbara Carden, Brandon Cissell and Bradley Johnson v. Public Protection Cabinet

Present for oral argument were Appellants Bradley Johnson and Brandon Cissell and counsel for Appellee, the Hon. Gordon Slone. After presenting oral arguments, the parties answered questions from the Board.

B. Michelle Crowe v. Justice and Public Safety Cabinet (Juvenile Justice) (3 appeals) **Moved from October**

Present for oral argument were counsel for Appellant, the Hon. David Suetholz, and counsel for Appellee, the Hon. Jamhal Woolridge. After presenting oral arguments, the parties answered questions from the Board.

6. INVESTIGATIONS

Department of Agriculture/Auditor's Report

Mr. Sipek stated that there was nothing new to report since the last Board meeting. Chairman Sapp stated that he understands how investigations might appear to others to be delayed, but due to budget cuts staff has been busy conducting hearings to save the cost of hearing officer's fees.

7. CLOSED SESSION

Ms. Herndon-Griffin moved that the Board go into Executive Session for the purposes of discussing complaints, proposed or pending litigation, and deliberations regarding individual adjudications. Mr. Hutcheson seconded. Chairman Sapp stated that the motion had been made and seconded for the Personnel Board to retire into closed Executive Session, passed by a majority vote of the members present, with enough members present to form a quorum. Pursuant to KRS 61.810(1) (c), (f), and (j), the Kentucky Open Meetings Act, the Board will now retire into closed Executive Session. Specific justification under the Kentucky Open Meetings Act for this action are as follows, because there will be discussion of proposed or pending litigation against or on behalf of the Board; and deliberations regarding individual adjudication. The motion carried 6-0. (11:05 a.m.)

Judge Chandler moved to return to open session. Mr. Gillis seconded and the motion carried 6-0. (11:45 a.m.)

8. CASES TO BE DECIDED

The Board reviewed the following cases. At that time, the Board considered the record including the Hearing Officers' findings of fact, conclusions of law and recommendations, any exceptions and responses which had been filed, and oral arguments where applicable.

A. Barbara Carden, Brandon Cissell and Bradley Johnson v. Public Protection Cabinet (Financial Institutions)

Mr. Hutcheson moved to note Appellant Cissell's exceptions, Appellant Johnson's exceptions and oral arguments and to accept the recommended order dismissing the appeals. Mr. Gillis seconded and the motion carried 6-0.

- B. Michelle Crowe v. Justice and Public Safety Cabinet (Juvenile Justice)
(3 appeals) **Moved from October**

Mr. Blevins moved to note Appellant's exceptions, Appellee's response, and oral arguments and to accept the recommended order dismissing the appeals. Mr. Hutcheson seconded and the motion carried 6-0.

- C. Daymon Duvall v. Justice and Public Safety Cabinet (Corrections)
Deferred from October

Ms. Herndon-Griffin moved to note Appellant's exceptions and oral argument and to accept the Final Order Altering the recommended order and sustaining the appeal, as attached to the minutes. Judge Chandler seconded and the motion carried 6-0.

- D. John Grevious v. Justice and Public Safety Cabinet (Corrections)
Deferred from October

Mr. Hutcheson moved to note Appellee's exceptions, Appellant's response and oral argument and to accept the Final Order Altering the recommended order and dismissing the appeal, as attached to the minutes. Ms. Herndon-Griffin seconded and the motion carried 6-0.

- E. Michael Agbor v. Transportation Cabinet

Mr. Gillis moved to note Appellant's exceptions, Appellee's response and to accept the recommended order dismissing the appeal. Ms. Herndon-Griffin seconded and the motion carried 6-0.

- F. Maurice Spaulding v. Cabinet for Health and Family Services

Mr. Hutcheson moved to note Appellant's exceptions and to accept the recommended order to uphold the back pay issue in favor of the Appellee. Mr. Blevins seconded and the motion carried 6-0.

G. Benita Settee v. Cabinet for Health and Family Services

Mr. Gillis moved to accept the recommended order dismissing the appeal. Ms. Herndon-Griffin seconded and the motion carried 6-0.

Show Cause Orders – No Response Filed – Appeals Dismissed

The following cases had a show cause order entered by the hearing officer recommending that the appeals be dismissed for failure to timely prosecute unless a statement was filed by the Appellants stating sufficient cause to excuse their failure to appear at the scheduled hearing. There was no response submitted by the Appellants to the show cause orders.

H. Vickie Bush v. Justice and Public Safety Cabinet (Corrections)

I. Mary McIntosh v. Justice and Public Safety Cabinet (Corrections)

Mr. Hutcheson moved to find that the Appellants had not responded to the show cause order and that the recommended orders be accepted *en bloc* dismissing the appeals for failure to timely prosecute the appeals. Judge Chandler seconded and the motion carried 6-0.

9. **WITHDRAWALS**

Mr. Blevins moved to consider the following withdrawals of appeals *en bloc* and to accept the withdrawals and dismiss the appeals. Mr. Gillis seconded and the motion carried 6-0.

A. Dennis Giles v. Energy and Environment Cabinet

B. Joe Groat v. Justice and Public Safety Cabinet (Corrections)

C. Carol Krausman v. Justice and Public Safety Cabinet (Juvenile Justice)

D. John Scott v. Justice and Public Safety Cabinet (KSP)

10. SETTLEMENTS

Judge Chandler moved to accept the following settlements *en bloc*, as submitted by the parties, and to sustain the appeals to the extent set forth in the settlement. Mr. Blevins seconded and the motion carried 6-0.

- A. Alma Jo Fox v. Cabinet for Health and Family Services
- B. Erin Goin v. Transportation Cabinet
- C. Jeffery Hayes v. Finance and Administration Cabinet
- D. Steven New v. Public Protection Cabinet (2 appeals)

11. OTHER

Chairman Sapp asked if there were any other matters to be discussed. There being no further business, Mr. Blevins moved to adjourn. Ms. Herndon-Griffin seconded and the motion carried 6-0. (11:50 a.m.)

Wayne D. Sapp, Chairman

Larry B. Gillis, Vice Chairman

Tommy W. Chandler, Member

David F. Hutcheson, Jr., Member

Donald W. Blevins, Member

Ramona Herndon-Griffin, Member